

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES POSTAL SERVICE

and

Case 14-CA-195011

ROY YOUNG

ORDER REMANDING¹

On September 25, 2018, Administrative Law Judge Melissa M. Olivero issued a decision finding that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by directing employees to limit their email communications to supervisors and managers only and not to copy or forward emails to other employees or their union representatives and Section 8(a)(3) and (1) by issuing a notice of suspension to the Charging Party for not following this directive. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.²

This case implicates the Respondent's restrictions on the use of its email system by employees. In her decision, the judge cited *Purple Communications, Inc.*, 361 NLRB 1050 (2014), and concluded that the Charging Party "engaged in a protracted course of

¹ Chairman Ring, who is recused, is a member of the panel but did not participate in this decision on the merits.

In *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S. Ct. at 2644. See also, e.g., *D.R. Horton*, 357 NLRB 2277, 2277 n.1 (2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *NLRB v. New Vista Nursing and Rehabilitation*, 870 F.3d 113, 127–28 (3d Cir. 2017); *1621 Route 22 West Operating Company*, 357 NLRB 1866, 1866 n.1 (2011), enfd. 725 Fed. Appx. 129, 136 n.7 (3d Cir. 2018).

² On December 17, 2019, the Respondent filed a Notice of Recent Authority calling the Board's attention to *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143 (2019).

protected, concerted activity via email.” The Board recently overruled *Purple Communications* and announced a new standard that applies retroactively to all pending cases. *Caesars Entertainment d/b/a Rio All-Suites Hotel and Casino*, 368 NLRB No. 143, slip op. at 8-9 (2019). In *Caesars Entertainment*, the Board held that “an employer does not violate the Act by restricting the nonbusiness use of its IT resources absent proof that employees would otherwise be deprived of any reasonable means of communicating with each other, or proof of discrimination.” *Id.*, slip op. at 8. In their briefs to the Board, the General Counsel and the Respondent both requested that the case be remanded to the judge for further consideration if the Board overruled *Purple Communications*.

Accordingly, we remand this case to the judge for further consideration, to include permitting the parties to file supplemental briefs to the judge. Further, the judge may reopen the record to obtain evidence relevant to deciding this issue.

ORDER

IT IS ORDERED that this proceeding is remanded to Administrative Law Judge Melissa M. Olivero for appropriate action as set forth above.

IT IS FURTHERED ORDERED that the judge shall prepare a supplemental decision setting forth credibility resolutions, findings of fact, conclusions of law, and a recommended Order. Copies of the supplemental decision shall be served on all parties, after which the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

Dated, Washington, D.C., April 3, 2020.

Marvin E. Kaplan,

Member

(SEAL)

William J. Emanuel, Member

NATIONAL LABOR RELATIONS BOARD